

Panaji, 24th July, 1978 (Savana 2, 1900)

SERIES I No. 16

OFFICIAL GAZETTE

GOVERNMENT OF GOA, DAMAN AND DIU

EXTRAORDINARY

GOVERNMENT OF GOA, DAMAN AND DIU

Law Department (Legal Advice)

Notification

LD/Bill/18/77/78

The following Act which was passed by the Legislative Assembly and assented to by the President of India on 6-7-78 is hereby published for general information of the public.

B. S. Subbanna, Under Secretary (Law).

Panaji, 24th July, 1978.

The Maharashtra Co-operative Societies (Goa, Daman and Diu Third Amendment) Act, 1977

(Act No. 14 of 1978) [6th July, 1978]

AN

ACT

further to amend the provisions of the Maharashtra Co-operative Societies Act, 1960, in its application to the Union territory of Goa, Daman and Diu.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twenty-eighth Year of the Republic of India as follows: —

1. **Short title and commencement.** — (1) This Act may be called the Maharashtra Co-operative Societies (Goa, Daman and Diu Third Amendment) Act, 1977.

(2) It shall come into force at once.

2. **Amendment of section 2.** — In clause (10) of section 2 of the Maharashtra Co-operative Societies Act, 1960, (Maharashtra Act XXIV of 1961) as in force in the Union territory of Goa, Daman and Diu (hereinafter called "the Principal Act"), a comma shall be inserted after the figure "1949" and after the comma so inserted, the words "and includes any society which is functioning or is to function as a Land Development Bank under Chapter XI" shall be inserted.

2A. **Amendment of section 67.** — In section 67 of the Principal Act, for the figures and words "9 per cent" the figures and words "12 per cent" shall be substituted.

3. **Insertion of sections 73A to 73H.** — After section 73 of the Principal Act, the following sections shall be inserted, namely: —

"73A. **Disqualification for being designated officer simultaneously of certain specified societies or for being designated officer of the same society for more than six years.** — (1) In this section and in sections 73D, 73E and 73F, "a designated officer" means the Chairman, the President, the Vice-Chairman and the Vice-President, and includes any other officer of the society as may be declared by the State Government, by notification in the Official Gazette, to be a designated officer, but does not include any Officer appointed or nominated by the State Government or by the Registrar.

(2) No person shall, at the same time, be or continue to be, a designated officer of more than one society falling in Category I or Category II or Category III of the categories mentioned below; and shall not be or continue to be a designated officer in more than two societies in the aggregate in the three categories: —

Category I. — Societies, the area of operation of which extends to the whole of the Union territory of Goa, Daman and Diu.

Category II. — Societies, the area of operation of which does not extend to the whole of the Union territory of Goa, Daman and Diu but extends to one or more districts; and the authorised share capital of which is more than Rs. 10 lakhs.

Category III. — Societies, the area of operation of which does not extend to the whole of a district but extends to one or more talukas, and the authorised share capital of which is not more than Rs. 10 lakhs but is not less than Rs. 5 lakhs.

(3) If any question arises whether or not a society falls under any of the categories referred to in sub-section (2), such question shall be referred to and decided by the Registrar, and his decision shall be final.

(4) If any person is at the commencement of the Maharashtra Co-operative Societies (Goa, Daman and Diu Third Amendment) Act, 1977, a designated officer of more than two societies in the said categories, or of more than one society in the same category, then unless he resigns his office in the society or societies in excess of the number prescribed under sub-section (2) within a period of ninety days from such commencement, he shall, at the expiration of the said period, cease to be a designated officer of all such societies.

(5) If any person becomes, at the same time, after the commencement of the said Act, a designated officer of societies in excess of the number prescribed under sub-section (2), unless he resigns his office in the society or societies in excess of the said number within a period of ninety days from the date on which he is elected or appointed a designated officer of more than the permissible number of society or societies, or if the elections or appointments are held or made simultaneously, from the date on which the result of the last of such elections or appointments is declared, he shall, at the expiration of the said period of ninety days, cease to be a designated officer of all such societies.

(6) No person shall be, or shall continue to be, a designated officer of any society of any of the categories referred to in sub-section (2) for a consecutive period of more than six years, and at the expiration of that period any such person shall cease to be a designated officer of that society, and shall not be eligible for being re-elected or re-appointed as a designated officer, until a period of three years has elapsed after the expiry of the aforesaid period of six years.

Explanation: For the purposes of this sub-section — (a) in calculating the consecutive period of six years in office, any period for which the person concerned may have been such officer before the commencement of the Maharashtra Co-operative Societies (Goa, Daman and Diu Third Amendment) Act, 1977 shall be ignored;

(b) if any person resigns his office as a designated officer at any time within twelve months of the date on which the consecutive period of six years would, but for his resignation, have been completed, he shall be deemed to have completed the period of six years on his resignation.

73B. Reservation of seats, on committees of certain societies, for Scheduled Castes, Tribes and for weaker section of members. — On the committee of such society or class of societies as the State Government may, by general or special order, direct, two seats shall be reserved, one for the members who belong to the Scheduled Castes or Scheduled Tribes and one for the weaker section of the members who have been granted loans from the society of an amount not exceeding Rs. 200 during the year immediately preceding. If no such persons are elected or appointed, the committee shall co-opt the required number of members on the committee from amongst the persons entitled to such representation.

73C. Reservation of seats for employees on committees of certain societies. — On the committee of such society or class of societies as the

State Government may, by general or special order, direct where the number of permanent salaried employees of the society is 25 or more, —

(a) if the number of members of the committee thereof is 11 or less — one seat; and

(b) if the number of such members is 12 or more — one additional seat for every 10 members over and above the first 11 members,

shall be reserved for such employees. The seats so reserved shall be filled by selection made by the recognised union or unions, from amongst such employees. If there be no such union, the members representing such employees may be nominated by the State Government. Any person selected or nominated as a member of the committee to any reserved seat shall not be entitled to be elected as an officer of such society, or to vote at election of officers.

73D. Restrictions on representation of certain class of members on committees of certain societies and for being designated officers. — (1) In the case of an Apex Co-operative Bank and Federal Institutions, there shall not be more than one representative of individual members on the committee of such Bank and Federal Institution and such representative shall not be eligible for being elected or appointed as a designated officer.

(2) In the case of a Land Development Bank or an Apex Land Development Bank, there shall not be more than one representative on the committee of such Bank, of members, who have not taken any loans from the Bank, and such representative shall not be eligible for being elected or appointed as a designated officer.

(3) In the case of an Agricultural Credit Society which gives loans to individuals for the raising of crops, there shall not be more than one representative on the committee of such society, of members who have not taken any loans from the society; and that representative shall be elected or appointed only from amongst members who have not taken loans. Such representative shall not be eligible for being elected or appointed as a designated officer.

73E. Society's nominee on other society not eligible to be designated officer except in a federal society. — No member of a society who is nominated to represent it on any other society, shall be eligible for being elected or appointed as a designated officer of the other society, unless the other society is its federal society.

73F. In notified societies members not having minimum number of transactions of certain monetary limits not entitled to be designated officers. — In the case of such class or classes of societies as may be notified by the State Government, by notification in the Official Gazette, no member shall be eligible for being elected or appointed as a designated officer, if he does not fulfil the minimum qualification relating to his transactions with the society of such monetary limits as may be laid down, from time to time, in such notification.

73G. Member who or whose near relation is dealing in goods for purchase of which loans are given

by the society not eligible to be on its committee.— In the case of a society, which gives loans to members for purchasing machinery, implements, equipment, commodities or other goods, no member, who or whose near relation is a dealer in such goods or is director of a company or a partner in a firm carrying on business in such goods, shall be eligible for being elected or appointed as a member of the committee of such society.

Explanation. — For the purposes of this section, the expression “near relation” means wife, husband, father, mother, son, daughter, son-in-law or daughter-in-law.

73H. Provision for conduct of elections to committees (and of officers) to certain societies and term of office of members of such committees.—

(1) The election of the members of the committee (and the officers by the committees) of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter:—

(i) Such Apex Cooperative Institutions which the State Government may, by general or special order published in the Official Gazette, from time to time, specify in this behalf, regard being had to the financial position and share capital of such institutions;

(ii) All Co-operative Banks;

(iii) Land Development Bank;

(iv) All Federal Institutions;

(v) Any other society or class of societies, which the State Government may, by general or special order published in the Official Gazette, from time to time, specify in this behalf, regard being had to the financial position and share capital of such institutions.

(2) When the election of all the members of the committee of any such society is held at the same time, the members elected on the committee at such general elections shall hold office for a period of three years from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.

(3) Notwithstanding anything in the bye-laws of any such society, only the committee of management shall be elected by a general body of members of the society; and all other committees authorised by or under the bye-laws may be constituted only by electing or appointing persons from among the persons who are members of the committee of management, and all such committees shall be sub-committees of the committee of management, and shall be subordinate to it.”

4. After section 77 of the principal Act, the following section shall be inserted, namely:—

“77A. Appointment of members of committee, new committee or Administrator where there is failure to elect or where committee does not enter upon office.—(1) Where the Registrar is satisfied that:—

(a) at the first constitution of the committee of any society there is a failure to elect all or any of the members of the committee;

(b) the term of the committee of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the members required to fill the vacancies;

(c) any committee is prevented from entering upon office;

(d) a new committee has failed to enter upon office on the date on which the term of office of the existing committee expired; or

(e) a new committee cannot for any reason be constituted before the expiry of the term of office of the existing committee, he may, either *suo moto* or on the application of any officer of the society, by order appoint:—

(i) any member or members of the society to be the member or members of the managing committee to fill the vacancies;

(ii) a committee, consisting of not more than three members of the society, or one or more administrators, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office:

Provided that, before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the notice and consider all objections and suggestions received by him within that period;

Provided further that, it shall not be necessary to publish such notice in any case where the Registrar is satisfied that immediate action is required to be taken or that it is not reasonably practical to publish such notice.

(2) The committee or administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may, from time to time give, have power to discharge all or any of the functions of the committee or of any officer of the society, and take all such action as may be required to be taken in the interest of the society.

(3) The committee or administrator shall make necessary arrangement to constitute a new committee or for enabling the new committee to enter upon office, as the case may be, within such period or extended period as the Registrar may specify.”

5. Amendment of section 78.— For section 78 of the principal Act, the following shall be substituted and shall be deemed to have always been so substituted, namely:—

“78. Power of removal of committee or member thereof.— (1) If, in the opinion of the Registrar, the committee of any society or any member of such committee persistently makes default or is negligent in the performance of duties imposed on it or him by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interests of the society or its members or wilfully disobeys directions issued by the Registrar for the purposes of securing proper implementation of co-operative productions and other development programmes approved or undertaken by the State Government or is otherwise not discharging its or

his functions properly, or where a situation has arisen in which the committee or any member thereof ceases or refuses to discharge its or his functions and the business of society has or is likely to come to a standstill, or where any member of such committee stands disqualified by or under this Act for being a member, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of issue of notice, and after consulting the federal society to which the society is affiliated, by order, —

(a) remove the committee, and

(i) appoint a committee, consisting of three or more members of the society in its place,

or

(ii) appoint one or more administrators, who need not be members of the society and who may be individuals or a corporation (including a company owned or controlled by the State or a subsidiary thereof),

to manage the affairs of the society for a period not exceeding two years specified in the order, which period may at the discretion of the Registrar, be extended from time to time, so however that the total period does not exceed four years in the aggregate;

(b) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed.

(2) When a notice is issued against any committee or member under sub-section (1), if resignation from any office is tendered by the committee or member it shall not be valid or effective, until two months have elapsed from the date of issue of the notice or until it is permitted to be accepted by the Registrar, whichever is earlier.

(3) The committee or administrator so appointed shall subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society and take all such action as may be required in the interests of the society.

The committee or administrator appointed as aforesaid shall, notwithstanding anything contained in the bye-laws have power to call a special general meeting of the society to review or to reconsider the decision or the resolution taken or passed at the general meetings called by the previous committee or to endorse actions taken by it.

(4) The Registrar may fix the remuneration payable to the administrators and any expenses of management which shall be payable out of the funds of the society within such time or at such intervals as the Registrar may fix, and if such remuneration or expenses are not paid within such time or at intervals the Registrar may direct the person having custody of the funds of the society to pay to the administrators such remuneration and expenses in priority to any other payments (except land revenue, any arrears of land revenue, or any sum recoverable from the society as arrears of land revenue) and he shall,

so far as the funds in the credit of the society allow, comply with the orders of the Registrar.

(5) If at any time during any period, or extended period referred to in sub-section (1), it appears to the Registrar that it is no longer necessary to continue to carry on the affairs of the society as aforesaid, the Registrar, may, by an order direct that the management shall terminate; and on such order being made, the management of the society shall be handed over to a new committee duly constituted.

(6) The committee or administrator shall, at the expiry or termination of it or his term of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society:

Provided that, if a new committee is not, or cannot be, constituted at the expiry or termination of the term of office of the committee or administrator, for any reason beyond the control of the committee or administrator, the term of office of the committee or the administrator as the case may be, shall be deemed to be extended, until the new committee is duly constituted.

(7) All acts done or purported to be done by the committee or administrator during the period the affairs of the society are carried on by the committee or the administrator appointed under sub-section (1), shall be binding on the new committee."

6. Insertion of section 79A. — After section 79 of the Principal Act, the following shall be inserted, namely: —

"79A. Government's power to give directions in the public interest. — (1) If the State Government, on receipt of a report from the Registrar or otherwise is satisfied, that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government, or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the society concerned, as the case may be shall be bound to comply with such directions.

(2) The State Government may modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions may impose such conditions as it may deem fit.

(3) Where the Registrar is satisfied that any person was responsible for not complying with any directions, the Registrar may by order: —

(a) if the person is a member of the committee of the society remove the member from the committee and appoint any other person as a member of the committee for the remainder of the term of his office and declare him to be disqualified to be such member for a period of six years from the date of the order;

(b) if the person is an employee of the society direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order, remove the members appoint other person as members and declare them disqualified as provided in clause (a) above:

Provided that, before making any order under this sub-section the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society to which the society is affiliated.

Any order made by the Registrar under this section shall be final."

7. Amendment of section 95.—In section 95 of the principal Act, —

(i) for the marginal heading the following shall be substituted, namely: —

"Attachment before award and interlocutory orders."

(ii) after sub-section (3) the following shall be inserted, namely: —

"(4) The Registrar or the person authorised under section 88 as the case may be, may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision in a dispute referred to in sub-section (1) as may appear to be just and convenient."

8. Amendment of section 105.—In section 105 of the Principal Act, —

(i) the existing section shall be renumbered as sub-section (1) thereof;

(ii) after sub-section (1) so renumbered the following shall be inserted, namely: —

"(2) Notwithstanding anything contained in sub-section (1), the Liquidator shall not have the right to vote on behalf of the society in liquidation, at the election of the members of the committee or of the officers of any other society."

9. Insertion of Chapter XI-A.—After Chapter XI of the principal Act, the following shall be inserted, namely: —

"CHAPTER XI-A

Election of committees and officers of certain societies

144A. Application of this Chapter and definitions.—(1) Except section 144Y, this Chapter shall apply only to election to committees of societies belonging to the categories specified in section 73H.

(2) In this Chapter, unless the context otherwise requires, —

(a) "Administrative Tribunal" means the Administrative Tribunal constituted under the Goa, Daman and Diu Administrative Tribunal Act, 1965 (6 of 1965);

(b) "Collector" means the Collector having jurisdiction over the local areas in which the registered office of the society concerned is situated, and includes the Additional Collector, and also any officer not below the rank of Deputy Collector, appointed by the State Government to exercise the powers and to perform the duties of the Collector under this Chapter;

(c) "election" means an election of a member or members of the committee of a specified society;

(d) "specified society" means a society belonging to any of the categories specified in section 73H.

144B. When elections to be held.—(1) Every election shall be held as far as possible sometime prior to the date on which the term of office of the retiring member or members is due to expire. If a vacancy occurs due to any other reason, it shall be filled as early as practicable.

(2) Notwithstanding anything contained in the bye-laws of any specified society, election to all the specified societies shall be held afresh in accordance with the provisions of this Chapter within six months of coming into force of the Maharashtra Co-operative Societies (Goa, Daman and Diu Third Amendment) Act, 1977.

144C. Conduct of elections.—(1) Save as otherwise provided, every election shall be held on such date or dates as the Collector may fix, and shall be conducted under his control by such Returning Officer and other officers, as may be appointed by the Collector in this behalf.

(2) In all cases, where a society has to send a nominee as a member of the committee of any specified society, the election of such nominee shall be conducted under the control of the Collector of the District in which the registered office of the society sending the nominee is situated.

(3) In all cases, where the bye-laws of a specified society authorise the Government nominee or the nominee of a financing agency to be a member of the committee of the society no election need be held for such purpose.

(4) The voting of every election shall be by secret ballot.

144D. Cost of conducting elections.—(1) The expenses of holding of any election, including the payment of travelling allowances, daily allowances and other remunerations, if any, to the persons appointed to exercise the powers and perform the duties in respect of the election, shall be borne by the specified society concerned.

(2) For this purpose the Collector may call upon a specified society to deposit with him such amount as he considers necessary for the conduct of elections. Within eight days from the receipt of such directions from the Collector, the society shall deposit the specified amount with the Collector.

(3) The Collector shall maintain an account of the expenses incurred in connection with the election and within six months from the declaration of the results of the elections, render the same to the society concerned, and shall refund

to the society the balance, if any, remaining unspent. If the expenditure exceeds the amount of deposits, the Collector shall call upon the society to pay the excess amount as specified by him within eight days from the receipt of the direction from him, and the society shall comply with such directions.

(4) On failure of a specified society to pay as aforesaid the deposit amount or to pay the excess amount, the Collector may recover the sums due, together with interest thereon at the rate of 12 percent per annum from the society as arrears of land revenue.

144E. Disqualifications for membership.—(1) A person shall be disqualified for being elected as, and for being a member, of the committee of any specified society, —

(a) if he is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be or is elected, appointed or co-opted to any reserve seat on the committee of a society under section 73C;

(b) if he has been convicted of an offence punishable under section 153-A or section 171-E or section 171-F or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (XLV of 1860) or under section 144-Q or clause (a) of sub-section (2) of section 144-R of this Act unless a period of six years has elapsed since the date of his conviction;

(c) if he has been convicted by a court in India for any offence and sentenced to imprisonment for not less than two years, unless a period of five years has elapsed since his release;

(d) if he is found guilty of a corrupt practice by the Development Commissioner unless a period of six years has elapsed since the date on which the decision of the said Commissioner takes effect;

(e) if he is so disqualified by or under any other provision of this Act.

(2) For the purposes of clause (a) of sub-section (1), a person shall not be deemed to hold an office of profit under a society, if he does not receive any remuneration other than compensatory allowance or honorarium payable under sub-section (2) of section 65 not exceeding Rs. 6000 per year.

Explanation.—In this sub-section, “compensatory allowance” means the travelling allowance, the daily allowance or such other allowance which is paid to the holder of the office for the purpose of meeting the personal expenditure in performing the functions as holder of that office.

(3) Notwithstanding anything contained in clause (b) or (c) of sub-section (1), a disqualification under either clause shall not, in the case of a person who on the date of conviction is a member of any society, take effect until three

months have elapsed from that date or, if within that period an appeal or an application for revision is brought in respect of the conviction or the sentence until that appeal or application is disposed of by the court.

144F. Account of election expenses and lodging of account.—(1) Every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him.

(2) The account shall contain such particulars as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be specified by the State Government, by general or special order, published in the Official Gazette.

(4) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of the election are different, the latter of those two dates, lodge with the Collector an account of his election expenses which shall be a true copy of the account kept by him under sub-section (1).

144G. Disqualification for failure to lodge account of election expenses.—If the Collector is satisfied that a person, —

(a) has failed to lodge an account of election expenses within the time and in the manner required by the last proceeding section, and

(b) has no good reason or justification for the failure, the Collector, shall, by order published in the Official Gazette declare him to be disqualified for being elected as, and for being, a member of the committee of any specified society, and any such person shall be disqualified for a period of three years from the date of the order.

144H. Removal or reduction of period of disqualification.—The State Government may, for reasons to be recorded remove any disqualification under this Chapter or reduce the period of any disqualification.

144 I. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Chapter: —

(1) “Bribery”, that is to say —

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing —

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to —

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward —

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation. — For the purposes of this clause, the term "gratification" is not restricted to pecuniary gratifications or gratifications estimated in money and it includes all forms of entertainment and all forms of employment for reward, but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 144-F.

(2) "Undue influence", that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that —

(a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who —

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community, or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his

family or his agent) to or from any polling station:

Provided that, the hiring of a vehicle or vessel by an elector or by several electors at their joint cost for the purpose of conveying him or them to and from any polling station shall not be deemed to be a corrupt practice under this clause:

Provided further that, the use of any public transport vehicle or vessel or railway carriage by any elector at his own cost for the purpose of going to or coming from any polling station shall not be deemed to be a corrupt practice.

Explanation. — In this clause and in the next succeeding clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(4) The use of vehicle belonging to a specified society for the purpose of any election.

(5) The incurring or authorising of expenditure in contravention of section 144F.

(6) Making special advances of loans or otherwise favouring any elector or group of electors between the date of declaration of programme for an election and the date of declaration of the result thereof.

144 J. Maintenance of secrecy of voting. — (1) Every Officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

144K. Officers, etc., at elections not to act for candidate or to influence voting. — (1) No person who is a Returning Officer or an Assistant Returning Officer or a Presiding or Polling Officer at an election, or an Officer or clerk, appointed by the Returning Officer or the Presiding Officer to perform any duty in connection with an election shall in conduct or the management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid, and no member of a Police Force, shall endeavour —

(a) to persuade any person to give his vote at an election, or

(b) to dissuade any person from giving his vote at an election, or

(c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall, on

conviction, be punished with imprisonment which may extend to six months, or with fine, or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

144L. Prohibition of canvassing in or near polling station.—(1) No person shall, on the date or dates on which a poll is taken at any polling station commit any of the following acts within the Polling Station or in any public or private place within a distance of one hundred metres of the polling station, namely:—

- (a) canvassing for votes; or
- (b) soliciting the vote of any elector; or
- (c) persuading any elector not to vote for any particular candidate; or
- (d) persuading any elector not to vote at the election; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under sub-section (2) shall be cognizable.

144M. Penalty for disorderly conduct in or near polling stations.—(1) No person shall, on the date or dates on which a poll is taken at any polling station,—

(a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as megaphone or a loud-speaker, or

(b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of Officers and other persons on duty at the polling station.

(2) Any person who contravenes, or wilfully aids or abets the contravention of, the provisions of sub-section (1) shall, on conviction, be punished with imprisonment which may extend to three months, or with fine, or with both.

(3) If the Presiding Officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(4) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1) and may seize any apparatus used for such contravention.

144N. Penalty for misconduct at the polling station.—(1) Any person who during the hours

fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the Presiding Officer may be removed from the polling station by the Presiding Officer or by any police officer on duty or by any person authorised in this behalf by such Presiding Officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the Presiding Officer, he shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine, or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

144O. Penalty for illegal hiring or procuring of conveyances at elections.—If any person is guilty of any such corrupt practice as is specified in clause (3) or (4) of section 144-I at or in connection with an election, he shall, on conviction, be punished with fine which may extend to one thousand rupees.

144P. Breaches of official duty in connection with election.—(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall, on conviction be punished with fine which may extend to five hundred rupees.

(2) An offence punishable under sub-section (1) shall be cognizable.

(3) No suit or other legal proceedings shall lie against such person for damages in respect of any such act or omission as aforesaid.

(4) The persons to whom this section applies are the Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers and any other persons appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "Official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

144Q. Removal of ballot papers from polling station to be an offence.—(1) Any person who at any election fraudulently takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees or with both.

(2) If the Presiding Officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct

a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that, when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the Presiding Officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be cognizable.

144R. Other offences and penalties therefor. —

(1) A person shall be guilty of an electoral offence if at any election he —

(a) fraudulently defaces, or fraudulently destroys any nomination papers; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a Returning Officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; or

(d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot paper; or

(e) fraudulently puts into any ballot box anything other than the ballot paper which is authorised by law to put in; or

(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such act.

(2) Any person guilty of an electoral offence under this section shall —

(a) if he is a Returning Officer or an Assistant Returning Officer or a Presiding Officer at a polling station or any other officer or clerk employed on official duty in connection with the election, on conviction, be punished with imprisonment for a term which may extend to two years, or with fine, or with both;

(b) if he is any other person, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

(4) An offence punishable under sub-section (2) shall be cognisable.

144S. Application of section 148 to offences under this chapter subject to certain modifications.

— The provisions of section 148 shall apply to the offences under this Chapter, subject to the modification that no prosecution for an offence punishable under this Chapter shall be lodged, except with the previous sanction of the Collector.

144T. Disputes relating to elections to be referred to the Administrative Tribunal. — (1) Notwithstanding anything contained in section 91 or any other provision of this Act, any dispute relating to an election shall be referred to the Administrative Tribunal.

(2) Such reference may be made by an aggrieved party by presenting an election petition to the Administrative Tribunal, within a period of two months from the date of declaration of the result of the election:

Provided that, the Administrative Tribunal may admit any petitions after the expiry of that period, if the petitioner satisfies the Administrative Tribunal that he had sufficient cause for not preferring the petition within the said period.

(3) In exercising the functions conferred on it by or under this Chapter, the Administrative Tribunal shall have the same powers as are vested in a Court in respect of —

(a) proofs of facts by affidavit;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling discovery or the production of documents; and

(d) issuing commissions for the examination of witnesses.

(e) In the case of any such affidavits, an officer appointed by the Administrative Tribunal in this behalf may administer the oath to the deponent.

(4) Subject to any rules made by the State Government in this behalf, any such petition shall be heard and disposed off by the Administrative Tribunal as expeditiously as possible. An order made by the Administrative Tribunal on such petition shall be final and conclusive and shall not be called in question in any court.

144U. Deposits towards costs for hearing and power to award costs. — A petitioner presenting any election petition under the last preceding section shall pay a deposit not exceeding Rs. 500 as the Administrative Tribunal may direct towards the costs for hearing the petition. Unless the petitioner deposits the same as aforesaid the petition shall be summarily dismissed. Subject to such conditions as may be prescribed, at the time of deciding the petition, the Administrative Tribunal shall assess the costs of hearing of the petition and shall require the petitioner or the respondents, or both as the case may be, to defray the whole or in such proportion as he thinks fit, the costs of the petition, including the deposits so made. The Administrative Tribunal shall credit to Government such sum as it assesses as

the cost to Government of hearing the petition (but not exceeding Rs. 500 in any case).

144V. Contents of petition. — (1) An election petition shall —

(a) contain a concise statement of the material facts on which the petitioner relies;

(b) set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that, where the petitioner alleges any corrupt practice, the petition shall be also accompanied by an affidavit in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

144W. Relief that may be claimed by the petitioner. — A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

144X. Power to make rules for purpose of this chapter. — Without prejudice to any other power to make rules contained elsewhere in this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to the various stages of the elections (including preparation of list of voters).

144Y. Special provision for election of officers of specified societies. — (1) This section shall apply only to elections of officers by members of committees of societies belonging to categories specified in section 73H.

(2) After the election of the members of the committee, or whenever such election is due, the election of the officers or officers of any such societies shall be held as provided in its bye-laws,

but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf."

10. Amendment of section 154. — For section 154 of the principal Act, the following shall be substituted and shall be deemed to have always been so substituted, namely: —

"154. Revisionary powers of State Government and Registrar. — (1) The State Government or the Registrar suo moto or on an application, may call for and examine the record of any enquiries or proceedings of any matter other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If, in any case, it appears, to the State Government or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the persons affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(3) No application for revision shall be entertained if made after two months of the date of the communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies that he had sufficient cause for not making application within such period.

(4) The State Government, may, by order direct that the powers conferred on it by this section shall in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by any officer of the rank of Secretary to the Government."

Secretariat,

Panaji,

19th July, 1978.

K. C. D. GANGWANI

Secretary to the Government
of Goa, Daman and Diu
Law Department (Legal Advice)